

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
PACIFIC GAS AND ELECTRIC COMPANY)
)
Request to Revoke the Grant of the License of)
Alon Shatzki for Trunked Industrial/Business Pool)
Radio Service Station WPMU363, Milpitas,)
California)
)
And)
)
PERSONAL COMMUNICATIONS INDUSTRY)
ASSOCIATION)
)
Request to Modify the License of Alon Shatzki)
for Trunked Industrial/Business Pool Radio)
Service Station WPMU363, Milpitas,)
California)
)
And)
)
ALON SHATZKI, INC.)
)
Licensee of Trunked Industrial/Business Pool)
Radio Service Station WPMU363, Milpitas,)
California)

MEMORANDUM OPINION AND ORDER

Adopted: October 20, 2003

Released: October 31, 2003

By the Commission:

1. *Introduction.* On November 22, 2002, Alon Shatzki, Inc. (ASI) filed an application for review¹ of an October 23, 2002, decision by the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Division).² The Division's decision affirmed the modification of ASI's license for Private Land Mobile Radio Station WPMU363, Milpitas, California, by reducing the authorized ERP from 185 to 23 watts,³ and denied ASI's Petition for Reconsideration of the Division's earlier order proposing the modification.⁴ For the reasons stated below, we deny ASI's application for

¹ Application for Review of Alon Shatzki, Inc. (filed Nov. 22, 2002) (*AFR*).

² Alon Shatzki, Inc., *Memorandum Opinion and Order on Reconsideration*, 17 FCC Rd 20900 (WTB PSPWD 2002) (*Reconsideration Order*).

³ *Id.* at 20907 ¶ 16.

review.

2. *Background.* On August 27, 1998, ASI filed an application to operate an Industrial/Business Pool trunked station in Milpitas, California.⁵ The application was coordinated by the Personal Communications Industry Association (PCIA), a FCC-certified frequency coordinator.⁶ On January 4, 1999, the Division's Licensing and Technical Analysis Branch (Branch) granted ASI's application to operate Station WPMU363 on numerous frequencies, one of which is 153.5225 MHz the subject of this proceeding.⁷ Station WPMU363's base station was authorized to operate at 185 watts effective radiated power (ERP).

3. On September 19, 2000, Pacific Gas and Electric Company (PG&E) submitted a petition seeking revocation of the license for Station WPMU363, on the basis of potential interference from the use of frequency 153.5225 MHz to PG&E's Stations KME687 and WPPX407 operating on frequency 153.5150 MHz in Newman, Fairfield, and Oakdale, California.⁸ PG&E argued that ASI should have, but did not obtain PG&E's consent as part of ASI's application for this frequency.⁹ Upon inquiry from the Branch, the PCIA reviewed its records on the Station WPMU363 frequency recommendation, and

(...continued from previous page)

⁴ Pacific Gas and Electric Company, *Memorandum Opinion and Order*, 17 FCC Rcd 98, 101 ¶ 9 (WTB PSPWD 2001) (*MO&O*).

⁵ File No. A025195 (filed Aug. 27, 1998).

⁶ Frequency Coordination No. 981270029. Frequency coordination in the Private Land Mobile Radio (PLMR) Services is the process by which a private entity certified by the Commission recommends the most appropriate frequencies for applicants in designated radio services. In 1986, the Commission adopted frequency coordination rules and procedures in an effort to maximize service to the public by assuring that the assignment and management of PLMR spectrum is performed in an efficient and effective manner. *See* Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, PR Docket No. 83-737, 103 FCC 2d 1093, 1094-95 ¶ 2 (1986) (*Frequency Coordination R&O*). The Commission has stated that accurate information is fundamental to its ability to review effectively the frequency recommendations made by FCC-certified frequency coordinators in connection with the Commission's licensing determinations. A fundamental aspect of frequency coordination, in any radio service, is an accurate determination by a FCC-certified frequency coordinator as to whether the proposed operations potentially will cause harmful interference to existing co-channel or adjacent channel licensees. *See generally* American Mobile Telecommunications Association, Inc. and American Trucking Association, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 12416, 12422-23 ¶¶ 13-15 (WTB PSPWD 2001).

⁷ Station WPMU363 is authorized to operate on frequencies 152.4575, 153.3425, 153.3575, 153.5225, 157.7175, 160.0125, 160.1175, and 160.2075 MHz, in addition to 153.5225 MHz.

⁸ *See* Request to Revoke the License for WPMU363 filed by Pacific Gas and Electric Company (filed Sept. 19, 2000) (*Request to Revoke*). PG&E is also authorized to operate mobile units throughout California on 153.5150 MHz. *See* License for Station KA7177.

⁹ In 1997, the Commission amended its rules to allow centralized trunking in the PLMR bands between 150 MHz and 512 MHz. *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14337-38 ¶¶ 56-59 (1997). The Commission emphasized that trunking would be permitted only in those areas where exclusivity is recognized by the Commission or where an applicant/licensee has obtained the consent of all licensees whose service areas overlap a circle with a radius of seventy miles from the proposed trunked system's base station. *See* 47 C.F.R. § 90.187. In 1999, the Commission provided applicants with the alternate of obtaining concurrence whenever the 19 dBu interference contour (VHF) or 21 dBu interference contour (UHF) from a proposed trunked station intersects the 37 dBu service contour (VHF) or 39 dBu service contour (UHF) of any existing co-channel or adjacent channel station. *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Third Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 10922, 10926-27 ¶¶ 6-9 (1999).

determined that there might be licensees not accounted for in the frequency recommendation.¹⁰ PCIA failed to account for PG&E's station operations and, thus, failed to obtain PG&E's consent permitting ASI to operate on frequency 153.5225 MHz at 185 watts ERP.¹¹ In view of this, PCIA suggested reducing the authorized ERP for Station WPMU363 to 23 watts.

4. On December 28, 2001, the Division denied PG&E's request to revoke ASI's license, but initiated a proceeding to modify ASI's license for Station WPMU363 to reduce the authorized power from 185 watts to 23 watts ERP.¹² The Division cited Section 316 of the Communications Act of 1934, as amended (Act),¹³ as the authority for this action.¹⁴ In accordance with Section 1.87 of the Commission's Rules,¹⁵ the Division provided ASI with notice of the proposed license modification and an opportunity to interpose a protest.¹⁶

5. On January 25, 2002, ASI filed a petition for reconsideration of the Division's action in its December 28, 2001 *Memorandum Opinion and Order*.¹⁷ On the same date, ASI also filed an opposition to the proposed license modification.¹⁸ On October 23, 2002, the Division denied ASI's *Reconsideration Petition* and its *Opposition*, and modified the license for Station WPMU363 by reducing the authorized ERP of the base station from 185 to 23 watts.¹⁹

6. The instant application for review seeks reversal of the Division's October 23, 2002 *Reconsideration Order*. In its application for review, ASI contends that the PG&E filing was an untimely petition for reconsideration that should not have been considered, and that the time limitations of Section 405 of the Act and Section 1.113 of the Commission's Rules²⁰ preclude the modification action taken by the Division.²¹ Further, ASI asserts that the Division lacks authority under Section 1.41 of the Commission's Rules²² to take informal action in this case.²³

7. *Discussion.* We agree with the Division that it has authority to modify ASI's license under Section 316 of the Act and Sections 1.41 and 1.87 of the Commission's Rules.²⁴ Section 316 is subject neither to the "changed circumstances" limitation of Section 312 of the Act²⁵ that pertains to

¹⁰ See Request to Modify License by Reducing ERP filed by the Personal Communications Industry Association (filed Apr. 2, 2001) (*Request to Reduce ERP*).

¹¹ *Id.*

¹² *MO&O*, 17 FCC Rcd at 101 ¶ 10.

¹³ 47 U.S.C. § 316.

¹⁴ *MO&O*, 17 FCC Rcd at 101 ¶ 9.

¹⁵ 47 C.F.R. § 1.87.

¹⁶ *MO&O*, 17 FCC Rcd at 101 ¶ 10.

¹⁷ Alon Shatzki, Inc. Petition for Reconsideration (filed Jan. 25, 2002).

¹⁸ Alon Shatzki, Inc. Opposition to Proposed License Modification (filed Jan. 25, 2002) (*ASI Opposition*).

¹⁹ See *Reconsideration Order*, 17 FCC Rcd at 20906 ¶ 16.

²⁰ 47 C.F.R. § 1.113.

²¹ *AFR* at 4, 6.

²² 47 C.F.R. § 1.41.

²³ *AFR* at 4.

²⁴ 47 C.F.R. § 1.87.

²⁵ 47 U.S.C. § 312.

license revocations, nor to the time limitation on filing reconsideration requests imposed by Section 405 of the Act.²⁶

8. ASI argues that the Division lacked authority to modify ASI's license, and that the Commission may only act to modify a license under Section 316 of the Act if there have been changed circumstances since the original grant of the application.²⁷ ASI is mistaken. Under Section 316 of the Act, the Commission may modify a license "if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act . . . will be more fully complied with."²⁸ That provision contains no limitation on the time frame within which the circumstances underlying the modification must have occurred.²⁹ While a license may be revoked under Section 312 only for conduct occurring after an authorization has been granted, a license may be modified under Section 316 for a valid reason whether it arose prior to or after the Commission granted the license.

9. Contrary to ASI's contention,³⁰ the initial license grant is not entitled to administrative finality because the defect in the frequency coordination occurred prior to the license grant. ASI provides no basis for that assertion, and that argument is contrary to established precedent. There are many Commission decisions modifying licenses because of pre-grant defects such as lack of consent.³¹ Under the doctrine of administrative finality, the courts recognize that the laws governing the Commission establish a structure where at some juncture a Commission order becomes final beyond its own power to reconsider.³² Thus, the courts have held that the public interest in finality is dominant over the public interest in improving the administrative result upon further reflection.³³ However, as the Commission recently stated, "The courts . . . also recognize that, although a prevailing . . . doctrine, administrative finality is not absolute."³⁴ Equity doctrines may permit reopening a case to avoid a substantial injustice.³⁵

10. Although Section 405 of the Act, as implemented by Sections 1.106³⁶ and 1.113³⁷ of the

²⁶ 47 U.S.C. § 405.

²⁷ *Id.* at 6-7.

²⁸ 47 U.S.C. § 316(a)(1).

²⁹ In contrast, Section 312 of the Act generally limits the grounds for license *revocations* to actions that occurred after the license was granted or could not reasonably have been known before the license was granted. *See* 47 U.S.C. § 312(a), (b).

³⁰ *See AFR* at 8.

³¹ *See, e.g.,* License of California Metro Mobile Communications, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 22974 (2002); Industrial Telecommunications Association, Inc., *Order of Modification*, 17 FCC Rcd 599 (WTB PSPWD 2002); Wayne E. Noll, *Order of Modification*, 17 FCC Rcd 165 (WTB PSPWD 2002); Excel Logistics, *Order of Modification*, 16 FCC Rcd 17629 (WTB PSPWD 2001); Fresno Mobile Radio, Inc., *Order of Modification*, 16 FCC Rcd 19360 (WTB PSPWD 2001); Town Taxi, *Order of Modification*, 16 FCC Rcd 14820 (WTB PSPWD 2001); Michiana Metronet, Inc., *Memorandum Opinion and Order*, 8 FCC Rcd 5108 (CCB 1993) (modifying licenses that should not have been granted where the error was not caught until the license grant had become final).

³² *See Greater Boston Television Corp. v. FCC*, 463 F.2d 268, 288 (D.C. Cir. 1971).

³³ *Id.*

³⁴ Advanced Communications Corporation, *Memorandum Opinion and Order*, 18 FCC Rcd 2926, 2930 ¶ 8 (2003).

³⁵ *Id.*

³⁶ 47 C.F.R. § 1.106(f) (petitions for reconsideration must be filed within thirty days from the date of public notice of the final Commission action).

³⁷ 47 C.F.R. § 1.113(a) (action taken on delegated authority may be set aside *sua sponte* within thirty days after public notice has been given of the action).

Commission's Rules,³⁸ explicitly requires that petitions for reconsideration be filed within thirty days after public notice of the action is given, Section 316 of the Act has no such requirement on modification action. Nor, for that matter, is there any time limitation within which to file requests for informal action under Section 1.41.

11. ASI further asserts that the Division did not have authority to modify ASI's license because its action was solely triggered by the complaint filed by PG&E requesting revocation of the license for Station WPMU363 due to potential interference to PG&E's stations.³⁹ ASI contends that the PG&E revocation petition was actually a reconsideration request filed fatally late, and cannot be resurrected by calling it something other than what it is,⁴⁰ *i.e.*, an informal request for agency action pursuant to Section 1.41 of the Rules. The Division, however, denied the PG&E petition for revocation. We find that the Division's action modifying ASI's license by reducing the base transmitter power was not tantamount to a revocation of ASI's license. Revocation of the subject license would have meant that ASI could not operate at all on the designated frequency (153.5225 MHz); whereas, modification, in this instance, merely means that a change in placement of the base station antenna is required for operational parameters comparable to the current ones.⁴¹

12. We agree with the Division that Section 1.41 provides it with jurisdiction to resolve this matter as PCIA informally requested that ASI's license be modified and PG&E's pleading can be characterized as an informal request for action.⁴² However, the Commission may take informal action either at the request of an interested party under Section 1.41, or on its own initiative⁴³ pursuant to Section 1.87 of the Rules⁴⁴ and Section 316 of the Act, whether or not a reconsideration request could have been filed at an earlier stage in the proceedings.⁴⁵ Since the time period to file a reconsideration request elapsed, formal procedures were no longer available and, as such, it was appropriate for the Division to consider the pleadings of PCIA and PG&E as informal requests and take action under Section 1.41.⁴⁶ As previously noted, there is no time limit for requesting informal action or license modification.

³⁸ See JPJ Electronic Communications, Inc., *Order on Reconsideration*, 16 FCC Rcd 2902, 2904-05 ¶ 5 & n.19 (WTB PSPWD 2001) (*JPJ*) ("reconsideration under the Section 316 modification provision has been fundamentally predicated on a lapse of th[e] 30-day period [for reconsideration under Section 405(a) of the Act]") (citing *Radio Para La Raza, Memorandum Opinion and Order*, 40 FCC 2d 1102, 1105 ¶ 8 (1973)), *aff'd*, *Memorandum Opinion and Order*, 17 FCC Rcd 5512 (2002); *Comtex Communications, Inc., Order*, 15 FCC Rcd 11730, 11732 ¶ 6 (WTB PSPWD 2001), *modified on other grounds*, 16 FCC Rcd 4784 (WTB PSPWD 2001).

³⁹ *AFR* at 5-6.

⁴⁰ *AFR* at 3, 5-6.

⁴¹ See para. 12 *infra*.

⁴² *Reconsideration Order*, 17 FCC Rcd at 20903 ¶ 8.

⁴³ Even had PG&E not filed its *Request to Revoke*, and PCIA not filed its *Request to Reduce ERP*, we are authorized under our own auspices to propose modification of Shatzki's license if warranted by the public interest. See *Achernar Broadcasting Company, Memorandum Opinion and Order*, 15 FCC Rcd 7808, 7816 ¶ 17 (2000); see, e.g., *Pacific Gas & Electric Company and California Metro Mobile Communications, Memorandum Opinion and Order*, 16 FCC Rcd 15419, 15421 ¶ 8 (WTB PSPWD 2001) (*PG&E-California Mobile*).

⁴⁴ 47 C.F.R. § 1.87.

⁴⁵ *RKO General, Inc., Decision*, 1 FCC Rcd 1081, 1082 ¶ 6 (1986); *Union Broadcasting Corporation, Memorandum Opinion and Order*, 52 FCC 2d 387 ¶ 3 (1975) (*Union*); *California Metro Mobile Communications, Inc., Memorandum Opinion and Order*, 17 FCC Rcd 112, 113-14 ¶ 7 (WTB PSPWD 2002) (*Metro Mobile*); *JPJ*, 16 FCC Rcd at 2903-04, ¶ 5; *Colorado RSA 7B(2) Limited Partnership, Order*, 13 FCC Rcd 22079, 22081 ¶ 6 (WTB CWD 1998).

⁴⁶ *Union*, 52 FCC 2d at 387 ¶ 3; *PG&E-California Mobile*, 16 FCC Rcd at 15421 ¶ 8; *Metro Mobile*, 17 FCC Rcd at 113-14 ¶¶ 6-7.

Furthermore, not only is there ample precedent for considering untimely filed pleadings as informal objections under Section 1.41,⁴⁷ but, contrary to ASI's assertion, Global Cellular Communications, Inc. (*Global*)⁴⁸ does not support its contention that the Division had no authority to take informal action in this matter.⁴⁹ In *Global*, the Commission specifically set a filing deadline for informal objections.⁵⁰ Having established a formal procedure for the orderly filing of Section 1.41 objections, the Commission dismissed certain objections as untimely.⁵¹ That situation is not present here. In the instant case, neither a specific deadline for informal requests had been set nor a filing schedule established. Thus, *Global* is inapplicable to the instant case.

13. ASI also cites Spartan Radiocasting Co. (*Spartan*),⁵² to support its contention that the Division was without authority to act. In *Spartan*, it was noted that a formal procedure existed whereby, after an application for hearing was designated, the applicant was permitted to file a petition for reconsideration and request that the Commission grant the subject application without a hearing. The Commission stated that this formal procedure precluded reliance on Section 1.41 of the Rules.⁵³ Nevertheless, it decided to consider the Spartan pleading a further petition for reconsideration as Spartan had previously filed pursuant to the established formal procedure and had its reconsideration request denied.⁵⁴ The new Spartan pleading relied on the same facts as previously provided and requested the same procedural relief.⁵⁵ Thus, Spartan had used the formal procedure available to it, and had its contentions considered not once, but twice. On the other hand, no formal procedure had been used by PG&E and its assertions had not yet been considered. In view of this, we agree with the Division that the *Spartan* decision is distinguishable and not applicable to the circumstances present here.

14. We also reject ASI's assertion that the *San Mateo*⁵⁶ case supports its arguments.⁵⁷ *San Mateo* is readily distinguishable from this case because *San Mateo* discussed the Commission's ability to correct ministerial or clerical errors after the period established by Section 1.113 of the Commission's Rules for setting aside action on the Commission's own motion had expired.⁵⁸ In contrast, the instant case deals with the Commission's ability to modify a license after license grant pursuant to Section 316 of the Act. Nothing in *San Mateo* addressed the Commission's ability to modify a license under Section 316 of the Act. Accordingly, while we agree with ASI that the grant of the use of the frequency with an ERP of 185 watts was not a ministerial error, we ultimately conclude that *San Mateo* is inapposite.

⁴⁷ *Union*, 52 FCC 2d at 387 ¶ 3. In addition to the cases cited in note 36, *supra*, numerous petitions to deny have been dismissed as untimely but considered as informal objections under 47 C.F.R. § 1.41. See, e.g., Spectrum Communications, L.C., *Memorandum Opinion and Order*, 16 FCC Rcd 17679, 17682-83 ¶ 8 (WTB PSPWD 2001); Mountain Microwave, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 17633, 17636-37 ¶ 8 (WTB PSPWD 2001).

⁴⁸ Global Cellular Communications, Inc., *Order*, 8 FCC Rcd 8197 (1993) (*Global*).

⁴⁹ *AFR* at 5.

⁵⁰ Public Notice, Commission Announces Lottery to Select Commercial Nationwide 220 MHz Band Private Land Mobile Licensees, DA 93-159, 58 Fed. Reg. 9174 (1993).

⁵¹ *Global*, 8 FCC Rcd at 8197 ¶ 3.

⁵² 2 Rad. Reg. 2d 1095 (1964)

⁵³ *Id.* at 1096 ¶ 5.

⁵⁴ *Id.*

⁵⁵ *Id.* at 1095 ¶ 6.

⁵⁶ County of San Mateo, *Memorandum Opinion and Order*, 16 FCC Rcd 16501 (2001) (*San Mateo*).

⁵⁷ *AFR* at 6-7.

⁵⁸ *San Mateo*, 16 FCC Rcd at 16503 ¶ 8.

15. ASI also objects to the decision to modify the subject license because it was made on the suggestion of PCIA without the latter having conferred with ASI on the merits of the proposal.⁵⁹ First, we note that PCIA weighed in on this matter at the request of Division staff.⁶⁰ Next, we observe that having been notified by PCIA of PG&E's filing, ASI submitted a letter stating its views. Those views were considered by the Division in reaching its decision to propose license modification. Further, as required by Section 1.87 of the Commission's Rules, ASI was provided an opportunity, which it took, to protest the proposed modification of its license.⁶¹ In view of this, we conclude that ASI has had a full and fair opportunity to present its arguments.⁶²

16. Finally, ASI argues that the modification of its license negatively affects its ability to provide communications service to its customers.⁶³ ASI submits that the reduction of the base transmitter power from 185 watts to 23 watts largely vitiates the grant of the license for Station WPMY363 by reducing the range of the facility.⁶⁴ We reject the argument that the license modification will "substantially harm" ASI's customers as unsubstantiated.⁶⁵ We affirm the Division's finding that ASI failed to support this allegation by affidavit of a person or persons with personal knowledge thereof⁶⁶ as required by Section 309 of the Communications Act of 1934, as amended.⁶⁷ Nor, at this juncture of the proceeding, has ASI offered any affidavits to substantiate its allegations. As noted by the Division, an ERP of 23 watts can be comparable to ASI's current operational parameters if its base station antenna is positioned at an appropriate height and elevation.⁶⁸ Using 23 watts ERP, the 37 dBu contour of Station WPMU363 extends beyond the licensee's forty kilometer (km) mobile service area.⁶⁹ The mobile units can receive an acceptable signal level throughout the 40 km mobile service area and the increase to 185 watts ERP would only extend acceptable signal level beyond the authorized 40 km mobile service area.⁷⁰ In view of the foregoing, ASI has failed to make a sufficient showing that the modification of its license would actually hamper its current operations.⁷¹ Moreover, to the extent the modification may have a minor effect on ASI's operations, we affirm the Division's action modifying the subject license as nonetheless in the public interest, as required by Section 316 of the Act. License modification pursuant to

⁵⁹ *AFR* at 3-4.

⁶⁰ Frequency coordinators have an ongoing obligation to assist the Commission in resolving post-licensing disputes. *Frequency Coordination R&O*, 103 FCC 2d at 1107 ¶ 26.

⁶¹ See *ASI Opposition* note 16 *supra*.

⁶² See *Landlinx Communications, Second Order on Reconsideration*, 15 FCC Rcd 24932, 24933-34 ¶ 4 (WTB PSPWD 2000) (although under 47 C.F.R. § 1.41 there is no requirement for a formal pleading cycle, it was held that the opponent had a full and fair opportunity to present its objection).

⁶³ *AFR* at 4.

⁶⁴ *Id.*

⁶⁵ *AFR* at 4 n.1.

⁶⁶ *Reconsideration Order*, 17 FCC Rcd at 20906 ¶ 15.

⁶⁷ 47 U.S.C. § 309(d)(1). Section 316(a)(3) of the Act, 47 U.S.C. § 316(a)(3), makes any protest of a proposed modification subject to Section 309 of the Act.

⁶⁸ *Reconsideration Order*, 17 FCC Rcd at 20906 ¶ 15.

⁶⁹ See Section 90.205(d) of the Commission's Rules, 47 C.F.R. § 90.205(d), which provides for a 37 dBu signal strength at the edge of the service area.

⁷⁰ Actually, using the 23 watts ERP exceeds the 40 km base service area and complies with Section 90.205(d) of the Rules. While the rules permit ASI to use 185 watts ERP, the base service area would exceed 60 km.

⁷¹ We also note that ASI has additional frequencies on which it is authorized to operate.

Section 316 should be undertaken only under those limited and unusual cases where, in the light of the circumstances, it is clear that such action will promote the public interest, convenience, and necessity. We agree with the Division that the present case meets the standard set forth in Section 316.

17. *Conclusion.* We conclude that the Division's action modifying ASI's license for Station WPMU363, has met the public interest, convenience and necessity criteria of Sections 309 and 316 of the Act. As such, and for the reasons stated above, we deny ASI's application for review and affirm the Division's action modifying the subject license.

18. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review filed by Alon Shatzki, Inc., on November 22, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary